Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act Of 1996	)	CC Docket No. 96-98
	)	
Developing a Unified Intercarrier Compensation Regime`	)	CC Docket No. 01-92
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
	)	
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Pennsylvania Public Utility Commission (PaPUC) hereby submits these Comments in response to the Federal Communication Commission's (FCC) Public Notice of Proposed Rulemaking on Intercarrier Compensation (Docket No. 01-92) at FCC 08-

262 published in the Federal Register on November 10, 2008 (the *ICC NOPR*). The FCC set deadlines of November 26, 2008 and December 3, 2008 for filing Comments and Reply Comments on the *ICC NOPR*, respectively.

The PaPUC appreciates the opportunity to file Comments. As an initial matter, the PaPUC Comments should not be construed as binding on the PaPUC in any proceeding before the PaPUC. Moreover, the suggestions contained in these Comments could change in response to subsequent events. This includes a later review of other filed Comments and legal or regulatory developments at the federal or state level.

The PaPUC is seriously concerned that the abbreviated Comment and Reply Comment periods are inadequate to comprehensively consider the issues and ramifications of the proposals set out in this complex decision. Intercarrier Compensation, Universal Service, Broadband Deployment, and Phantom Traffic have been under consideration for several years.

The PaPUC does not believe that such an extremely abbreviated public input timeline is appropriate given this complexity. Moreover, time is short and the deadlines occur in the middle of national holidays.

The PaPUC believes that the FCC should not act on these proposals until more comprehensive review has taken place. At the same time, the Commission supports resolution of the various issues contained in the recent FCC proposals after a thorough review of comments and replies.

Given the importance of the Federal Universal Service Fund (FUSF) and Pennsylvania's net contributor role to the FUSF, the PaPUC is submitting Comments that

address the FUSF, the proposed Intercarrier Compensation reform, and Ancillary Issues contained in the three Appendices. The Ancillary Issues are the declaration of interconnected VoIP as an "information service"[1] and the FCC's legal authority to make the decisions issued in the ICC NOPR. The PaPUC does not address the Phantom Traffic proposal set out in Appendix A and B in extensive detail. However, the proposals appear reasonable at first glance although that could change following review of the Comments.

These latest proposals span more than 400 pages. This *ICC NOPR* addresses a series of complex issues that have evolved since at least 1996.

I. Universal Service Reform.

The FCC proposes to cap the FUSF at the current expenditure level.[2] The FCC proposes to condition receipt of future FUSF money on the recipient carriers' commitment to deploy a broadband network within five years.[3] The FCC defines a broadband network as one capable of a download speed equal to or greater than 768 kbps and upload speed greater than 200 kbps.[4]

The FCC further intends to implement reverse auctions. Reverse auctions are

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[1] *ICC NOPR*, Appendix C, Paragraph 206.

[2] *ICC NOPR*, Appendix A, Paragraphs 16-18; Appendix B, Paragraphs 14-17; Appendix C, Paragraphs 12-18 (exception for Rate of Return RLECs; High-cost support is capped, ETC support is no longer subject to the Identical Support Rule and, depending on the proposal, ETC support for CLECs is either "phased out" over five years (Appendix C) or rolled into an auction mandate which has only one winner (Appendix B, Paragraph 29).

[3] *ICC NOPR*, Appendix A, Paragraph 4; Appendix C, Paragraph 12; Appendix B, Paragraphs 15 and 25 (no broadband requirement with support limited to Carrier of Last Resort and *ETC Order* requirements).

[4] *ICC NOPR*, Appendix A, Paragraph 52. By way of contrast, Pennsylvania state law defines "Advanced Service" as a retail service capable of supporting a minimum speed of 200 kbps in at

permissive in Appendix A and Appendix C.[5] A reverse auction occurs only if the Incumbent Local Exchange Carrier (ILEC) in the FUSF supported study area does not, or will not, deploy the proposed broadband network. In Appendix B, the FCC mandates a reverse auction for all support based on the study area.[6]

The FCC also proposes a new Broadband Pilot for Lifeline customers (Broadband Pilot). The Broadband Pilot will allocate $300M from the capped FUSF to support the purchase of broadband devices (laptops, desktops, and the like) and to support broadband subscription service. The FUSF support for broadband devices will provide up to $100 toward purchasing the device but only after the FUSF carrier submits an invoice. The FUSF support for broadband service will provide another $5 in support in addition to the Lifeline support already provided to an eligible customer.[7]

The FCC proposes to underwrite these reforms and new program with a "numbers based" FUSF assessment of $1.00 (Appendix A and Appendix C) or $0.85 (Appendix B) per "Assessable Number" on residential customers.[8] Business customers will pay a "connection charge" neither defined nor priced in Appendix A and Appendix C. Appendix B sets the "connection charge" at $5.00 per dedicated connection for service up to 64 kbps (essentially voice service) or $35 per dedicated connection for service above

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least one direction and "Broadband" as having a band width equal to or greater than 1.544 Mbps in the downstream and 128 kbps in the upstream. See, 66 Pa.C.S. §§ 3011-3019, Section 3012.

[5] *ICC NOPR*, Appendix A, Paragraph 32 (ILECs and CLECs receive FUSF; ILECs based on their current support and CLECs on their actual costs; reverse auction will occur if an ILEC declines the broadband commitment); Appendix C, Paragraphs 16-18, 30-31, and 43 (all LECs high-cost if frozen at December 2008 level with reverse auctions and single winner for areas where the ILEC will not offer broadband).

[6] *ICC NOPR*, Appendix B, Paragraph 12.

[7] *ICC NOPR*, Appendix A, Paragraph 64; Appendix B, Paragraph 60. There is no functional equivalent in Appendix B.

[8] *ICC NOPR*, Appendix A, Paragraphs 97 and 298; Appendix B, Paragraph 52; Appendix C, Paragraphs 99 and 293.

64 Kpbs.[9]

The FCC will also increase the residential Subscriber Line Charges (SLCs) from $6.50 to $8.00. Business SLCs will go from $9.20 to $11.50.[10] SLCs were imposed to recover "non-traffic sensitive costs" in the FCC's earlier CALLS and MAG decisions.[11]

A. ***The Cap and Auction Proposal for FUSF Support.*** The PaPUC supported imposition of a cap on FUSF and reiterates support for that cap. The FCC's proposed cap on high-cost support and elimination of the Identical Support Rule are difficult to reconcile with other ancillary issues. These include the impact on competitive choice and funding the Broadband Pilot Program.

Appendix A and Appendix B would save FUSF resources by limiting FUSF support to current carriers (ILECs and competitive local exchange carriers (CLECs) alike). All carriers must commit to providing broadband. The ILECs must do so in five years. The CLEC/CETCs must do so with declining support from the same FUSF.[12]

Moreover, there is an express finding that the proposed reductions in intercarrier compensation constitute a "change of law" in Appendix A.[13] Assuming that the FCC proposals prevail as stated, this will likely give rise to claims in the states for lost revenues, at least by the ILECs for their lost intercarrier compensation revenues. The

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[9] *ICC NOPR*, Appendix B, Paragraph 81.
[10] *ICC NOPR*, Appendix A, Paragraph 298; Appendix C, Paragraph 293.
[11] *ICC NOPR*, Appendix C, Paragraphs 171 and 172.
[12] *ICC NOPR*, Appendix A, Paragraphs 12 and 39-40 (ILECs get their high-cost contingent on the commitment; CETCs get their support based on their costs and so long as they provide broadband service at retail rates comparable to those of the ILEC); Appendix C, Paragraphs 12 and 17 (all ILECs except rate of return ones have their support frozen, Rate of Return rural ILECs have support capped at a 2010 rate in 2010; CETCs have their support phased out over five years).

same claim could occur with regard to lost FUSF support distribution revenues as well.

ILEC claims to get revenue recovery for lost FUSF or intercarrier compensation revenue, if granted, will increase local rates. Increases in local rates to support interstate intercarrier compensation reforms will likely undermine universal service penetration rates without additional FUSF support.

The PaPUC previously documented that development by noting the declines in universal service penetration rates from 2001-2007 in comments addressing the Pennsylvania and MACRUC regional experience with universal service declines that occurred after adoption of the FCC CALLS and MAG decisions.[14] Additional FUSF support, however, can only come from savings obtained elsewhere or by increasing FUSF contributions.

Appendix A retains the ILECs' FUSF support based on the December 2008 allocations whereas CLEC/CETCs receive compensation based on their actual costs.[15] Appendix B imposes a mandatory reverse auction to allocate FUSF support. Appendix C phases out CETC/CLEC support over five years. Appendix A and Appendix C contain broadband deployment mandates in exchange for the receipt of FUSF support.

The proposal in Appendix A to compensate ILECs based on their December 2008 FUSF at least eliminates change of law claims for FUSF. However, the proposals to radically reduce intercarrier compensation in Appendix A and Appendix C is far more likely to give rise to "make whole" claims in the states. This is particularly true in

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[13] *ICC NOPR*, Appendix A, Paragraph 292. Other proposals do not appear to be that explicit.
[14] *In re: Intercarrier Compensation,* Docket No. 01-92, Ex Parte Comments of the PaPUC (October 27, 2008), pp. 2-3; *In re: Petition of AT&T,* Docket No. 08-152 and Docket No. 01-92, Comments of the PaPUC (August 21, 2008), pp. 22-25.

Appendix A given the express finding that reform is a change of law.

Appendix A cannot be reconciled with additional FUSF proposals, including the $300M Pilot Broadband Program, without resulting in additional costs. Those costs must come from increased FUSF assessments unless the expected savings from eliminating the Identical Support Rule for CLECs, which is now being used to calculate the support provided to CETCs, covers the additional Pilot Broadband Program costs.

The support for the Pilot Broadband Program in Appendices A and C would likely come from residential and business customers. The FCC proposals do not explain how this commendable Pilot Program could be limited to $300M given the need and the claims of broadband redlining certain to arise if this Pilot Program is so permanently restricted. The cost is important because extending the program nationwide will likely double the required size of the FUSF.[16]

Appendix B and C raise other concerns for similar reasons. FUSF savings are expected to come from reducing the support provided to CLECs/CETCs (Appendix A) or by eliminating that support (Appendix B and Appendix C). However, this approach may not be fully consistent with principles of competitive and technological neutrality for the delivery of federal support to various competing participants in the telecommunications marketplace.

Appendix B envisions one successful bidder, not successful bidders, for FUSF support at the end of the mandatory auction period – a period that is to be completed within one year of adoption of the FCC's decision.[17] The imposition of mandatory

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[15] *ICC NOPR*, Appendix C, Paragraphs 16 and 17.
[16] *ICC NOPR*, Appendix C, Paragraph 74.
[17] *ICC NOPR*, Appendix B, Paragraph 25.

auctions, particularly when the bidders are limited to those that are currently recipients of FUSF support, favors existing ILECs and CLECs.[18] The proposals exclude new entrants.

The proposals cap FUSF support at the level received in 2008 (Appendix A, Paragraph 12) or 2007 (Appendix B, Paragraph 23). Appendix A appears to continue the support in perpetuity if the recipient completes the five-year broadband deployment program.[19] There is no presumed recipient in Appendix B although reverse auctions are a mandate.[20] Appendix C continues FUSF support to the ILEC while phasing out the CLEC/CETC support over a five year period.[21] Both Appendix B and C are alike in that there is only one favored recipient at the end of the reformation process. In Appendix B, the auction winner becomes the sole recipient whereas in Appendix C the sole recipient is the ILEC after the CETC's support is phased out over five years.

Appendix B and C reduce FUSF costs through reductions in competitive choice. Competitive choice reductions occur because the successful bidder has an additional and secure revenue source, the FUSF support, compared to bidders or carriers against whom they compete. This revenue differential is more pronounced for new entrants because only pre-existing FUSF recipients can bid in any of the reverse auctions.[22]

Appendix C raises other concerns as well. Appendix C envisions a five-year phasing out of the CLECs support from the FUSF. Auctions occur but only if the ILEC

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[18] *ICC NOPR*, Appendix A, Paragraphs 16-18 and 20; Appendix B, Paragraph 33; Appendix C, Paragraph 49.
[19] *ICC NOPR*, Appendix A, Paragraphs 28 and 51. The chief difference is that the ILECs support continues based on the annual allocation whereas the CLEC/CETCs support continues based on their actual documented costs.
[20] *ICC NOPR*, Appendix B, Paragraph 18.
[21] *ICC NOPR*, Appendix C, Paragraphs 16-18.
[22] *ICC NOPR*, Appendix A, Paragraph 49; Appendix B, Paragraph 33; Appendix C, Paragraph 49.

cannot, or will not, complete a five-year broadband program.[23]

Appendix C envisions one carrier receiving FUSF support at the end of the proposed reforms. That carrier will apparently be the ILEC unless the ILEC cannot, or will not, complete the five-year broadband program that becomes the condition for receiving FUSF support.[24]

The PaPUC is concerned that Appendix B and C have not completely considered the long-term ramifications of limiting FUSF support to one carrier. Appendix B ends all FUSF support for every carrier except the successful bidder. Appendix C phases out all FUSF support to any carrier except the ILEC at the end of five years. After five years, no carrier gets FUSF support unless the LEC is the successful bidder in the auction that will occur only if the ILEC cannot, or will not, meet the five-year broadband program.

The alternative solution, providing FUSF support to more than one carrier in the study area, does not reduce FUSF costs although it will support competition – a questionable policy that may not be consistent with the narrow focus of Section 254. On the other hand, if these proposals limit support to one FUSF recipient to reduce costs, the FCC effectively admits that support for affordable telecommunications and broadband services can be maintained for only one carrier.

Proposals to limit FUSF support to one recipient per study area is far more consistent with the traditional view that network deployment and finance costs makes telecommunications and information service a "natural monopoly" compared to the prevailing competition paradigm. Solitary FUSF recipient support to minimize costs provides little solace to a competitive carrier seeking to enter the recipient's market and

[23] *Compare ICC NOPR*, Appendix C, Paragraphs 16-18 and 52.

willing to assume the obligations of an ETC.

The successful FUSF recipient will also have a very real competitive advantage. They alone will have a secure FUSF revenue stream that can be leveraged in the financial and service markets as contrasted with all other carriers. Moreover, the successful bidder would most likely be a larger carrier that can leverage their existing economies of scale. Finally, the policy preference for one successful FUSF recipient may not be competitively neutral. That is because unsuccessful prior recipients (CLECs or a losing ILEC) or new entrants (carriers that come to the study area after an auction or which were never eligible for FUSF) will not get a chance to obtain FUSF support.

B. The Five-Year Broadband Program. The proposal to fund a new "broadband connection" equipment and service program of $300M for Lifeline/Linkup customers is a commendable policy goal.[25] However, this proposed $300M cap is the "tip of the iceberg" for the total FUSF cost.

The PaPUC understands and commends the FCC for considering a new approach to FUSF which recognizes the emerging importance of broadband service availability compared to traditional voice service. The Pennsylvania General Assembly already did that by enacting two versions of Chapter 30 of the Pennsylvania Public Utility Code. This state legislation is designed to finance the ubiquitous deployment of broadband services throughout rural and urban Pennsylvania.

The PaPUC is concerned about the FCC's proposal for several reasons. The PaPUC is concerned that states will receive support to implement a broadband deployment program at the federal level as opposed to undertaking the kind of large local

[24] *ICC NOPR*, Appendix C, Paragraphs 16-18.

revenue enhancements that promoted broadband deployment in Pennsylvania under Chapter 30. The concern with underwriting states' cost for broadband deployment is heightened because the PaPUC shares the FCC's frank recognition that extending this Broadband Pilot Program throughout the country without limits will double the size of the FUSF.[26]

The FCC will find it increasingly difficult to maintain a Broadband Pilot Program capped at a $300M level given the size of the eligibility pool. The considerable policy pressure to go well beyond the $300M cap, however commendable, will produce astronomical increases in the size of the FUSF. Those increases can only come from additional assessments on the net contributor states be it SLCs, Assessable Numbers, or Business Connections.

The PaPUC realizes that lower-income consumers in net contributing states like Pennsylvania will get support and that this support reduces a given state's net contribution to the FUSF. The PaPUC suggests that the increased assessments on other consumers in net contributor states will outweigh the benefit the net contributor state could get from leveraging their portion of the $300M fund.

C. Broadband Deployment and Universal Service. The PaPUC is one of several states that have undertaken extensive reform of their intercarrier compensation rates and established state universal service funds (SUSFs) to support those efforts. That experience should be instructive.

1. Prior PaPUC Efforts and Costs. The PaPUC's prior comments in the pending Missoula Plan clearly establish that Pennsylvania already expended in excess

[25] *ICC NOPR*, Appendix A, Paragraph 64 and Appendix C, Paragraph 60.

of $1B dollars funding intercarrier compensation reform in Pennsylvania. As of 2006, Pennsylvania expended in excess of $1.014B dollars from 1997 through 2005 to support access and local rate reforms. This consisted of $605.9M on Verizon's access rate reductions, $189.4M on rural carrier access rate reductions, and $218.3M from a Pennsylvania Universal Service Fund (PaUSF) to support access rate reform. As of 2006, Pennsylvania spent approximately $127M annually on intercarrier compensation rate reforms. $90.4M is spent on Verizon's access rate reductions and $36.9M is spent on rural carrier access rate reductions.[27]

2. New PaPUC Efforts and Costs. The PaPUC undertook an accelerated broadband deployment program following enactment of a new version of Chapter 30 in 2005.[28] The new Chapter 30 permitted ILEC providers to accelerate Network Modernization Plans to deploy a broadband network in exchange for significant decreases in the preexisting productivity offsets in their then-current Chapter 30 Plan price cap mechanism formulas. The prior Chapter 30 Plans reflected a price cap regime with productivity offsets and a longer-term network modernization component.

Starting in 1993 and accelerated in 1995, the PaPUC and the ILECs have undertaken efforts to ensure that broadband is available in rural and urban Pennsylvania. The rural ILECs, all whom are regulated at the federal level and are impacted by these proposals, are currently set to comply with broadband deployment commitments by the end of 2008. Windstream Pennsylvania, another carrier regulated at the federal level, is committed to completing their broadband deployment commitment by 2013. Finally,

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[26] *ICC NOPR*, Appendix C, Paragraph 74.
[27] *In Re: Intercarrier Compensation,* CC Docket No. 01-92, Comments of the Pennsylvania Public Utility Commission (October 25, 2006), pp. 3-4.
[28] 66 Pa.C.S. § 3011 et seq repealing §§ 3001-3008 in 2004, Nov. 30, P.L. 1398, No. 183, immediately effective.

Verizon Pennsylvania and Verizon North are mandated to complete network modernization commitments no later than 2015.

These substantial broadband programs have been supported, in significant part, by revenue increases at the local level. The PaPUC has authorized intrastate revenue increases in excess of $76M since enactment of Chapter 30 in 2004.[29] Appendix A attached to these PaPUC Comments demonstrates the anticipated broadband completion dates for the remaining carriers effective January 2009.

The PaPUC also established a PaUSF by Tentative Order entered on April 18, 2000 at Docket nos. M-00001337 *Establishment of a Pennsylvania Universal Service Fund,* and P-00991648 and P-00991649 (The Global Joint Petitions). The Tentative Order became final by operation of law on April 25, 2000.

In Pennsylvania, from 2002 through 2005, the PaPUC support totaled in excess of $133M.[30] From 2006 through 2008, the PaPUC support totaled $33.565M in 2006 and $33.569M in 2007. The PaPUC currently projects payments of $33.570M in 2008 and $33.576M in 2009. The total PaPUC SUSF support since 2002 is approaching $268M.[31]

The proposals all fail to address the issue of Early Adopter expenses that already underwrote compensation reforms and what, if any, compensation they get in the policy.

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[29] *In re: Intercarrier Compensation,* Docket No. 01-92, Comments of the PaPUC (November 26, 2008), Appendix A.

[30] *In Re: Intercarrier Compensation,* Docket No. 01-92, Comments of the PaPUC (November 26, 2008), Appendix B. The 2002 annual support given recipient carriers was $33,095,234; the 2003 support was $33,515,402; the 2004 support was $33,523,868, and the 2005 support amount was $33,565,233.

[31] *In re: Intercarrier Compensation,* Docket No. 01-92, Comments of the PaPUC (November 26, 2008), Appendix B.

C. Funding Reform: Assessable Numbers, Business Connections and SLCs. The three primary vehicles for funding reform are assessments on end-user telephone numbers, assessments on business customers' connections, and SLCs

All three proposals rely on a "numbers" assessment on residential customers and new "connections charges" for business customers to fund FUSF. The proposals also rely uniformly on SLC increases from $6.50 to $8.00 (or by 23.08%) for residential customers and increases from $9.20 to $11.50 (or by 27.78%) for multi-line business customers. Only Appendix B details the proposed "business connection" charge. Appendix B would charge $5.00 per for a dedicated connection that is 64 kpbs or less. Appendix B would collect $35.00 per dedicated connection for those greater than 64 kbps. The PaPUC does not support exclusive reliance on these mechanisms for the reasons set out below.

1. Funding Mechanisms. The new "numbers assessment" would be $1.00 per residential line. This does not include a $1.50 increase in the SLC from $6.50 to $8.00. The total increase would be $2.50 and will result in federal charges at around $9.00 per residential number. The increase for multi-line business customers would go from $9.20 to $11.50 in the SLC. This is a considerable cost increase.

The approach also seems to contradict earlier information on FUSF reform costs and the impact that numbers would do to access charge restructuring and universal service funding reform, particularly in the earlier Missoula Plan proposals. At that time, the PaPUC filed Comments relying on industry statements, including statements from AT&T, that a $0.30 assessment on numbers generates approximately $2.5B in contributions to funding reform.[32] While AT&T was not advocating a numbers and

[32] *In re: Intercarrier Compensation,* Docket No. 01-92, Comments of the PaPUC (October 26, 2006), pp. 21-23 citing *Pennsylvania Workshop,* Docket No. M-00061972, Tr. 29-32 (Oral

connections based approach to funding the entire cost of the then-proposed Missoula Plan, the fact remains that a $.30 assessment on then-existing numbers was expected to generate $2.5B in additional revenue. The PaPUC noted then,[33] and references today, that a $1.20 assessment would generate approximately $7.5B in additional revenue above and beyond the cost of the FUSF in 2006.

The *ICC NOPR* proposals substantially reduce revenue outlays to CLECs and ILECs while imposing an additional $2.50 in proposed end-user surcharges. If $1.20 in 2006 could be expected to generate approximately $7.5B in additional revenue based on industry statements that $0.30 would generate $2.5B, the proposed $2.50 surcharge on residential end-user customers is reasonably expected to generate $15B in additional revenue. This $15B in additional revenue does not take into consideration revenues from the business dedicated connection charges. The $15B figure in additional revenue appears to be far larger than the growth in FUSF costs from $6.62B in 2006 to $6.95B in 2007, the latest year for which an Annual Report is publicly available.[34]

Also, the "numbers assessment" is premised on current number usage patterns. This expectation about relatively static number use may not continue. This is particularly true given recent PaPUC requests for huge amounts of numbers, set out in the next section, for new services. The PaPUC is concerned about the use of telephone numbers as the base methodology for determining FUSF contributions. Telephone numbers are a scare resource and have long been monitored very carefully to prevent practices that lead to unnecessary and expensive area code exhaustion.

Statements of Joel Lubin (AT&T). *Accord* NARUC Webinars on the Missoula Plan. September 14, 2006 and September 25, 2008.

[33] *In re: Intercarrier Compensation,* Docket No. 01-92, PaPUC Comments (October 26, 2006), pp. 21-23.

[34] USAC Annual Report (2007), Program Overview, pp. 1-2; USAC Annual Report, (2006), p. 4 at www.usac.org at document/usac-annual-report-2006.pdf

2. Assessable Numbers and New Services. The PaPUC is concerned about the numbers component of the FCC's proposals because, for Pennsylvania, telephone number conservation is extremely important. The PaPUC anticipates that 80% of Pennsylvania's area codes will be in exhaust status within the next five years. The PaPUC expects to implement NANPA jeopardy procedures for two area codes within the next 24 months.

The PaPUC is particularly concerned about impending area code exhaustion given recent number-intensive service proposals put out by providers, including Google's proposed GrandCentral service.

GrandCentral appears to be an innovative service that permits consumers to redirect incoming calls through uniquely assigned so-called routing numbers. Other similar number-dependent services similar to GrandCentral will most likely be offered in the future.

The PaPUC believes it is imperative that the FCC avoid establishing a regulatory regime, including the one set out in these proposals, in which the wording may be interpreted to exclude certain classes of telephone numbers from FUSF assessments. This interpretation appears to go beyond the traditional exemption for "routing service" numbers used internally to manage services in central offices or number portability.

The PaPUC is particularly concerned with the new definition for an "Assessable Number" in light of Paragraph 123 in Appendix A. The proposed criteria are a list of factors that determines if a routing number is an Assessable Number for the FUSF. One of those criteria states:

". . . and the ratio of such numbers to Assessable Numbers is no greater than 1:1."

This criterion is important to Pennsylvania. Pennsylvania anticipates a larger amount of numbers that are currently under request and may be supplemented in the future. For example, in the Pooling Administration Daily Activity Report dated November 5, 2008, one carrier requested 328 blocks of numbers (at 1,000 per block) in 312 rate centers in Pennsylvania, or 328,000 numbers. The Pooling Administrator and the PaPUC staff denied blocks in 257 of those rate centers across Pennsylvania on November 7, 2008.[35] On November 18, 2008 the same carrier requested another 328 blocks of 1,000 numbers in 312 rate centers, or 328,000 numbers. This lead to a total of 399,000 numbers in a two-week period i.e., the 71,000 numbers remaining from the November 5, 2008 request and the 328,000 numbers in the later request.

Five blocks were requested for growth. A telephone call from the PaPUC to the carrier confirmed that the remaining 323 blocks of numbers are, in fact, intended to support Google's GrandCentral Service. A closer examination of services like these indicates that one number would be used to ring all the other numbers on the customer's communications devices. Since this service is not a 1:1 ratio as set out in the proposed criterion, the service provider nor the consumer may be assessed for those numbers. That result directly undermines the conservation goal set out in Appendix A, Paragraph 111 as well as Appendix B, Paragraph 58 and Appendix C, Paragraph 107.

The PaPUC believes that the rationale to exclude FUSF contributions under Appendix A, Paragraph 123 appears to be inconsistent with Paragraph 144. Paragraph 123 states "that such numbers must be provided without charge to the end

[35] The requesting carrier was not authorized to operate in the 257 block areas.

user." Paragraph 144 states that "Commercial providers of free or nearly-free services generate revenue in other ways, such as advertising." However, revenues are generated by subscriptions to the service.[36]

The PaPUC asks the FCC to clarify that services which appear to offer free service to the end-user but which also generate revenue from services like advertising are not exempt from FUSF assessment. This clarification would ensure that a user of a number to route calls to an Assessable Number does not fall outside the definition of Assessable Numbers when the service, while ostensibly free, is generating additional revenue for the number provider. Moreover, the PaPUC suggests that the FCC clarify that offers of numbers directly to the end-user by means other than for traditional telecommunications be considered an Assessable Number.

This approach would ensure that services like GrandCentral are not excluded from FUSF assessments under paragraph 144. By the same token, of course, any incumbent or CLEC provider of similar services would be subject to the same rules.

3. Regulatory Symmetry. The PaPUC also notes an additional disparity between ILECs and CLECs on their Assessable Number contributions to the FUSF. In paragraph 124 of Appendix A, the proposal states that numbers obtained from an ILEC by a wireless provider that interconnects at the end office of the ILEC are not deemed to be Assessable Numbers for the ILEC. Instead, such numbers are deemed to be Assessable for the wireless provider. The PaPUC suggests that the FCC should clarify this proposed provision and appropriately extend it to CLECs because they are providing the same service and product. This preserves regulatory symmetry.

[36] See, for example, Google's website for its Grand Central product.

4. State Access to the Assessable Numbers Database. The FCC proposals will assign to the Universal Service Administrative Company (USAC) the responsibility for managing the database of Assessable Numbers. This could have an impact on State Universal Service Funds (SUSFs), including the PaUSF.

The PaPUC has a State Universal Service Fund (SUSF). The PaPUC requests that any final FCC decision permit any SUSF access to the Assessable Number database as a resource to manage the SUSF and promote number conservation. This approach ensures FUSF and SUSF contributions from carriers not otherwise regulated by the state commissions.

5. Functional Equivalency. The PaPUC notes that Paragraph 129 of Appendix A references a Bell South Ex Parte dated July 6, 2005. This Ex Parte is relied on for the Assessable Number "Functional Equivalency" of numbers.

The proposals contain no definition of Functional Equivalency nor are there any criteria listed for the test. The PaPUC notes, and incorporates, the earlier suggestion that electronic number mapping (ENUM) or similar access number protocols for managing numbers and facilitating interconnection constitute Functional Equivalency. This ensures that Functional Equivalent uses continue to support the FUSF and various SUSFs.

The PaPUC remains concerned about the huge amount of numbers that are, or may soon be, used to provide creative and innovative services. The PaPUC asks the FCC to address the possible discrepancy between Paragraphs 123 and 144 in Appendix A. The PaPUC also asks the FCC to craft a broad definition of Functional Equivalency to encompass emerging technologies and ensure that SUSFs have access to the database used to collect FUSF contributions from Assessable Numbers.

II. Intercarrier Compensation. The Intercarrier Compensation proposals are substantially identical. The three proposals establish an interim reciprocal compensation rate of $0.0007 per Minute of Use (MOU).

The proposals uniformly require the state commissions to conduct a series of cost study proceedings to arrive at a reciprocal compensation rate that cannot exceed the transitional rate. The cost studies are necessitated by the three proposals' conclusion to replace TELRIC rates, which contained cost allocations for non-traffic sensitive and traffic sensitive costs, with a new "additional cost" model that allocates only traffic sensitive costs to access termination rates. The states and the carriers have a ten-year period to transition from their current terminating access rates to the uniform rate although no interim rate may be higher than a carrier's current interstate or intrastate rate.

The PaPUC would add that the FCC's interpretation avoids outright preemption at this time while imposing a costing methodology to support an express rate cap limit of $0.0007 is the constructive equivalent of preemption.

The use of forbearance or outright preemption, as is proposed to support the determination that interconnected VoIP is an "information" service, will effectively rewrite federal law. Congress cannot delegate its legislative authority nor authorize an agency to rewrite federal legislation in the guise of implementing a federal law.

A. The New Intercarrier Compensation Model. The FCC's proposals uniformly impose a new "additional" cost standard on the states. The FCC relies on conclusions regarding on economic issues are, for the reasons set forth below, flawed.

1. The FCC's "New" Cost Standard Is Arbitrary and Burdensome.

The FCC's proposed "new" incremental cost ("additional costs") standard for replacing the already established total element long-run incremental cost (TELRIC) standard and methodology, and deriving the costs of access and reciprocal compensation rates, is arbitrary and burdensome. It is clear that the FCC's proposals on the adoption of an incremental cost standard are "results driven" and that a less than sound economic theory must be utilized in order to support a predetermined result. The FCC relies on a one-sided economic theory to support the appropriateness of the long run incremental cost (LRIC) standard for multiproduct telecommunications carriers. This theory has been repeatedly discredited in numerous evidentiary adjudications before state utility regulatory commissions that have comprehensively dealt with the costing and pricing of telecommunications services.[37] The PaPUC notes that the FCC's "new" incremental cost standard is nothing more than a rehashing of the relevant economic theory of the former Bell Communications Research (Bellcore) "school of economics" in the pre-divestiture AT&T-Bell system.

Rather than engaging in a comprehensive discussion of the relative merits of alternative economic theories that should govern the costing and pricing of access and

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[37] *See generally Joint Petition of Nextlink Pennsylvania, Inc., et al.*, Docket Nos. P-00991648, P-00991649, Order entered September 30, 1999, at 11-56, 196 PUR4th 172, 186-203 (Global Order), *aff'd, Bell Atlantic-Pennsylvania, Inc. v. Pa. Pub. Util, Comm'n*, 763 A.2d 440 (Pa. Cmwlth. 2000), *vacated in part sub nom. MCI Worldcom Inc. v. Pa. Pub. Util. Comm'n*, 844 A.2d 1239 (Pa. 2004) (the recovery of jurisdictional non-traffic sensitive joint costs of loop plant and facilities involves all intrastate services that utilize them including access); *Pennsylvania Public Utility Commission et al. v. Bell Atlantic-Pennsylvania, Inc.,* Docket No. R-00963550, Opinion and Order entered December 16, 1996, at 23-24 (100% of dial tone line costs cannot be solely allocated to local exchange service); and *Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth,* Docket No. I-00940035, Opinion and Order entered August 31, 1995, at 12

reciprocal compensation – as the FCC did in its landmark *Local Competition Order* – the FCC determines that the incremental cost standard is the appropriate one to use. In order to reach this result, the FCC references, but does not substantively address, the issue of joint and common costs for carrier access services and their recovery in rates from ***all*** users of joint and common facilities utilized for the provision of multiple telecommunications and information services. For example, the FCC correctly identifies copper loops as being facilities that are utilized by a multitude of services and thus have joint and common costs.[38] However, under the FCC's adopted incremental cost theory regarding access and call termination, joint and common costs play no role whatsoever and are literally "assumed away" by the underlying economic theory.[39]

In order to buttress its misplaced reliance on a flawed economic theory for measuring the economic costs of access, the FCC proposals mischaracterize TELRIC as allegedly measuring "the *average* cost of providing a function, which is not necessarily the same as the *additional* costs of providing that function."[40] By engaging in the "average cost" word play, the FCC is attempting to undermine the well-established premise that TELRIC is an acceptable method for measuring the *forward-looking economic costs* of access services and providing cost-based rates for both intrastate and interstate carrier access services and reciprocal compensation. The FCC summarily

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("[A] portion of all joint shared and common costs, including overhead costs, should be reasonably assigned to basic universal service.")

[38] *ICC NOPR*, Appendix A, Paragraph 247, at A-112. In the xDSL service example that the FCC uses in order to delineate the long run incremental cost associated with the services provided over an xDSL copper loop, there is no reference on whether the incremental cost should or should not include the cost of a remote terminal if copper-based xDSL service had to be provided beyond a certain distance from the central office.

[39] *ICC NOPR,* Appendix A, Paragraph 251. "First, unlike TELRIC, *the traditional economic approach for determining the incremental cost of a single service excludes all common costs.*" (Emphasis added).

[40] *ICC NOPR*, Appendix A, Paragraph 266, (emphasis in the original).

discounts its own extensive record discussion that established the TELRIC standard and cost methodology in its landmark *Local Competition Order*.

The FCC recognized in its *Local Competition Order* "that prices based on LRIC [long run incremental costs] *might not permit recovery of forward-looking costs if there were significant forward-looking joint and common costs among network elements.*"[41] Following its exhaustive examination of economic cost theories, standards and methods, the FCC reached the following result that was solidly based on extensive record evidence:

> We conclude that, under a TELRIC methodology, incumbent LECs' prices for interconnection and unbundled network elements shall recover the *forward-looking* costs directly attributable to the specified element, *as well as a reasonable allocation of forward-looking common costs.* Per-unit costs shall be derived from total costs using reasonably accurate "fill factors" (estimates of the proportion of a facility that will be "filled" with network usage); that is, the per-unit costs associated with a particular element must be derived by dividing the total cost associated with the element by a reasonable *projection* of the actual total usage of the element.
>
> *Local Competition Order*, Paragraph 682, *slip op.* at 351 (emphasis added).

The FCC provided the following cogent description of the TELRIC methodology:

> *Summary of TELRIC Methodology.* The following summarizes our conclusions regarding the setting prices of interconnection and access to unbundled network elements based on the TELRIC methodology for such elements. The *increment* that forms the basis for a TELRIC study shall be the entire quantity of the network element provided. As we have previously stated, all costs associated with the providing the element shall be included in the *incremental cost. Only forward-looking, incremental costs shall be included in a TELRIC study.* Costs must be based on the incumbent LEC's *existing wire center locations and more efficient technology available.*

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[41] *In re Implementation of the Local Competition Provisions in the Telecommunications Act of* 1996, CC Docket Nos. 96-98 and 95-185, (FCC, rel. Aug. 8, 1996), FCC 96-325, (*Local Competition Order*), Paragraph 630, *slip op.* at 320 (emphasis added).

Local Competition Order, Paragraph 690, *slip op.* at 354 (emphasis added).

The FCC's solid foundations for the TELRIC standard and methodology that were set through its *Local Competition Order* were substantially upheld by the U.S. Supreme Court. *Verizon Communications v. FCC*, 535 U.S. 467, 122 S.Ct. 1646, 152 L.Ed.2d 701 (U.S. 2002).

The majority of the state utility commissions, including the PaPUC, have adopted, followed, and implemented the TELRIC standard in numerous adjudication proceedings for the establishment of cost-based rates. These proceedings have involved generic adjudications for deriving unbundled network element (UNE) costs and rates, as well as individual interconnection arbitration proceedings. The majority of the state utility commissions, including the PaPUC, have accomplished this federally-mandated but unfunded mission under the auspices of TA-96 and relevant FCC rulings, and they continue to enforce relevant federal law *in conjunction with applicable state law*.

The FCC's unwarranted proposal to switch to a "new" incremental cost standard undermines the successful work that the states have so far accomplished, and places the federally unfunded obligation upon the states to carry out a new series of very complex and expensive proceedings in order to derive cost-based rates for intrastate carrier access services and reciprocal compensation under the FCC's "new" but unsustainable incremental cost standard and methodology.

It would be a far more efficient proposition if the FCC were to mandate the *uniform* use of the *preexisting* TELRIC standard and methodology for the derivation of cost-based interstate carrier access rates. The FCC's prescription could also include precise but not preemptive guidance on how the TELRIC standard and methodology

should be applied by the states for various categories of incumbent and competitive LECs (ILECs and CLECs).

It is common knowledge that a large number of rural ILECs are "average schedule companies" without appropriate jurisdictional separations and allocations of their respective investment and operational costs. There has not been any prior application of economic cost models such as TELRIC for the derivation of either interstate or intrastate carrier access rates for rural ILECs. Instead, the access rate derivation for rural ILECs is solely dependent on historical embedded cost accounting parameters (not economic costs), and/or periodic "revenue neutral" adjustments to access rates.

The FCC should carefully consider and provide useful and non-preemptive guidance on whether the use of the TELRIC standard and methodology should and could be utilized for the production of "proxy" cost-based interstate carrier access rates for these LEC categories.

2. The FCC's "New" Standard Leads to Inequitable Shifting of Costs

The FCC's proposed "new" incremental cost standard will also lead to an inequitable shifting of joint and common costs of carrier access to end-user consumers of telecommunications services. The FCC's proposed increases to the federal SLCs *in combination* with the adoption of the incremental cost standard, will lead to the inequitable shifting of the responsibility for the cost recovery of access network joint and common costs to the end-users of telecommunications services. However, the corresponding joint and common facilities that are used for the provision of access services are jointly utilized by *both* end-users *and* various providers of telecommunications *and* information services.

Perhaps the FCC may have the false impression that these common and joint use access facilities somehow already "have been built" and, thus, their forward-looking incremental cost is de minimus or "zero" as expressed in the FCC's example concerning fiber optic cable that has already been laid in a particular route.[42] This particular example ignores that *new* fiber optic cable is continuously being deployed for the joint and common function of providing increased access capacity in the transmission network, as well as for providing broadband downlink and uplink access capabilities in the distribution network for *both* telecommunications and information services providers *and* their end-user customers, e.g., the Verizon FiOS fiber optic deployment.

Using the FCC's proposed incremental cost philosophy, these continuously deployed joint and common fiber optic access facilities should have a de minimis or "zero" economic cost and a correspondingly low price. The PaPUC is concerned that such a result would be incompatible with the conventional financial expectations of capital cost recovery for those telecommunications carriers that deploy these fiber optic facilities, or of the investment community at large. If the FCC were to proceed with an equitable application of the incremental cost of access philosophy, then the end-user consumers of copper-based voice telephony should see *no* increases in their respective SLCs, and perhaps would be entitled to a "zeroing out" of their SLCs altogether. The joint and common copper loop facilities serving these end-users are already in place, and the establishment of cost-based SLC access rates under the FCC's proposed incremental cost standard should rationally lead to a de minimis or "zero" forward-looking economic cost of access for these end-users. The equitably uniform application of the FCC's incremental cost standard will lead to undesirable and financially unsustainable results.

[42] *ICC NOPR*, Appendix A, Paragraph 256.

The FCC's proposed imposition of its flawed incremental cost standard on the states will conflict with *both* federal and Pennsylvania law regarding the protection and advancement of universal service. The PaPUC has undertaken substantial intrastate carrier access reforms as explained elsewhere in these Comments, and is statutorily mandated by both Pennsylvania and federal law to protect and advance universal service "at affordable rates while encouraging the accelerated provision of advanced services and deployment of a universally available, state-of-the art, interactive broadband telecommunications network in rural, suburban and urban areas..." 66 Pa. C.S. § 3011(2).

Because of the PaPUC's extensive intrastate access charge reforms and the operation of Pennsylvania's Chapter 30 law, local monthly residential rates for certain rural ILECs are approaching or are at the $18 per month benchmark level (this figure *excludes* the federal SLC, 911 and telecommunications relay service (TRS) fees and taxes). The PaPUC is obligated by Pennsylvania statute to make further intrastate carrier access charge reductions only on a "revenue neutral basis." 66 Pa. C.S. § 3017(a).

The unwarranted federal imposition of the flawed incremental cost standard for the derivation of intrastate carrier access rates "may have almost automatic and negative impacts for basic local exchange service rates, and – on top of the contemplated substantial increases in the federal SLCs – can have adverse effects on the availability of universal telephone service, especially for end-user consumers in the lower income brackets."[43]

In addition, the FCC's imposition of the incremental cost standard on the states will subvert the *independent and distinct* Pennsylvania legal standard of "just and reasonable rates" for intrastate protected non-competitive telecommunications services.

66 Pa. C.S. §§ 1301, 3011(3), 3015(g), 3019(h). This will be an unacceptable result that will create considerable legal uncertainty in view of the fact that the PaPUC and numerous other state commissions have rejected the application of the incremental cost standard for the derivation of costs and prices of intrastate regulated telecommunications services.

Finally, the FCC's proposed adoption of a "new" incremental cost standard for carrier access services and the associated cost shifting to end-users of telecommunications services will violate Section 254(k) of the federal Telecommunications Act of 1996, 47 U.S.C. § 254(k). This federal statutory law provision directs that both the FCC and the PaPUC "shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service *bear no more than a reasonable share of the joint and common costs* of facilities used to provide those services." 47 U.S.C. § 254(k) (emphasis added).

3. The Impact of the FCC's New Cost Model. The PaPUC is concerned with the FCC's legal interpretation of its authority under Sections 201, 332, and Title I. Those provisions do not authorize the FCC to constructively preempt state commission authority through the establishment of federal reciprocal compensation rates for local telecommunications services and federal access rates for intrastate telecommunications services. The PaPUC reiterates its previously filed concerns with this legal reasoning and supports those filings which challenge the FCC's legal theory, including the filings by the National Association of Regulatory Utility Commissioners (NARUC) and other state commissions.

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[43] PaPUC Chairman James H. Cawley, Ex Parte Letter, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 *et al.*, filed October 24, 2008.

The FCC's proposals impose a new costing methodology and the resulting $0.0007 rate based on a finding that this is a "change of law" by the FCC.[44] The only exception is in Appendix C where rural rate of return carriers recover their high-cost loop support although that will be frozen at 2010 levels in 2010. The FCC's denial of that recovery to other carriers is supported by conclusions about "sumptuous earnings and dividends"[45] or that competitors, including incumbents in states with deregulated local services, can recover any lost revenues in their competitive markets.

The PaPUC already submitted a filing that addressed the FCC's denial of the carriers' lost support due to compensation reforms, including CLECs, due to the potential anti-competitive impact as well as undermining deployment commitments.[46] Appendix A limits revenue recovery to only those carriers that are previously certificated as an ETC in the respective study area.[47] Appendix B denies recovery to any recipient except the winner of a mandatory reverse auction.[48] Appendix C limits bidders to those able to seek FUSF to ILECs or previously certificated ETCs; CETC support is phased out over five years.[49]

The PaPUC is very concerned that USF denials or phase-outs to any carrier in the current economic climate are inadvisable. Revenue denials at this time will undermine investor expectations, hamper the CLEC's capital investment plans, and likely reduce the CLECs current employee complements.

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[44] *ICC NOPR*, Appendix A, Paragraph 292.
[45] *ICC NOPR*, Appendix C, Paragraph 318. This conclusion overlooks that price cap RLECs are financing the deployment of a broadband network in Pennsylvania under Chapter 30.
[46] *In re: Intercarrier Compensation,* Docket No. 01-92, Ex Parte Comments of the PaPUC (October 27, 2008), p. 4.
[47] *ICC NOPR,* Appendix A, Paragraphs 16-18, 49, and 52-53.
[48] *ICC NOPR,* Appendix B, Paragraphs 12 and 29.
[49] *ICC NOPR,* Appendix C, Paragraphs 49 and 52.

In particular, the PaPUC is concerned about reforms that deny incumbent carriers any revenue recovery attributable to reforms. That kind of outright denial or partial recovery implicates Pennsylvania state law and could likely increase local rates.

As discussed above, Section 3017 of the Pennsylvania Public Utility Code provides that any state commission reduction in access revenues occur on a revenue neutral basis. None of the FCC's reform proposals do that. The FCC does not authorize the full recovery of lost revenues and also mandates a state proceeding. This could be construed as a state commission action that then necessitates imposing substantial increases in local rates to compensate carriers for all the revenues lost by FCC action.

The PaPUC reiterates opposition to a decision that will deny revenue recovery attributable to any federal effort to reform access rates. The "numbers-based" USF assessments (whether the rate is another $1 as in Appendix A and Appendix B or merely another $.85 as in Appendix B) will increase end-user rates. SLC increases from $6.50 to $8.00 for residential consumers and from $9.00 to $11.50 for multiparty business customers will increase rates. Moreover, states may be forced to flow through substantial increases in local rates to compensate ILECs for lost revenues for either the FUSF or, more likely, intercarrier compensation reforms.

These rate increases aggravate the existing decline in telephone service penetration rates that the PaPUC witnessed, and informed the FCC about, following implementation of the FCC's CALLS and MAG reforms. The PaPUC reiterates that concern today, particularly given the proposals' conclusion that the impact is minimal.

The FCC's proposals do not explain or justify significant rate increases on end-users that would be used to underwrite carrier compensation reforms. A desire for rate

uniformity to eliminate arbitrage is understandable so long as the end-result does not undermine universal service. These proposals do just that.

Finally, the PaPUC suggests that the FCC's proposals are not competitively neutral. The FCC does not allow carriers to use satellite providers to meet any conditions for supporting their broadband deployment except for a very limited exception for some rural carriers and then only if their study area rates are more than 150% of their average loop cost but even then satellite cannot be used for more than 2% of their access lines. The FCC also imposes "post transitional" transport and termination obligations on a calling party's carrier that requires them to carry traffic to the called party's carrier end-office or tandem. There is no provision for carrying that traffic to existing or future meet points outside the incumbent carriers' study area. The FCC also limits USF support (with the exception of Appendix A) to incumbent carriers and denies USF support to CLECs by either not including them or phasing out their support over a five-year period.

The FCC's proposals do not clearly explain how selective USF recovery and truncated technology mandates on carriers to get any USF support that will be provided is competitively neutral. In fact, the proposal to provide some carriers with USF support while denying it to others effectively tilts the competitive field.

III. Ancillary Issues: Interconnected VoIP and the FCC's Authority. The PaPUC is also concerned with the FCC's proposal to preempt state jurisdiction over IP/PSTN and PSTN/IP service as an "information service" under TA-96. In addition, the PaPUC questions the FCC's legal analysis for the authority to impose federal mandates on intrastate communications. The PaPUC further questions the FCC's authority to

preempt authority the state commissions possess under federal law to changes in protocol required to manage networks and address quality of service in the states.[50]

A. Interconnected VoIP as Information Service. The proposals declare VoIP to be an Information Service beyond state regulation. The FCC relies on prior decisions in the *pulver.com* and *Vonage* decision. However, a contrary decision in the federal courts and decisions at the FCC regarding the "wholesale" telecommunications services used to provide VoIP[51] and the "severability" of VoIP traffic indicates that the FCC's decision is not consistent with prior decisions.

The *pulver.com* decision only applies to services that were offered to the public for free and did not involve the PSTN. The *Vonage* decision preempted state authority to impose certificate and 911 mandates on nomadic VoIP, not landline VoIP of the sort offered by some cable companies. On that point, the federal courts ruled that the FCC's decision does not extend to landline VoIP.[52]

In addition, this decision also contradicts the exception from the exclusion in the definition of "information service" in TA-96. The exclusion to the exception for information service holds that changes in protocol for the management of a telecommunications network are not information services. Since network management is not classified as information service, the FCC's proposal to preempt state authority over IP/VoIP that is IP/PSTN or PSTN/IP is untenable. The state commissions do not lose jurisdiction simply because a carrier is using a new technology to interconnect disparate networks in fulfillment of their Section 251(a) obligation.

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[50] Act 52 of 2008; 73 P.S. § 2251.6

[51] *In the Matter of DQE Communications, Inc. v. North Pittsburgh Telephone Company,* File No. EB-05-MD-027 (February 2, 2007: FCC Enforcement Bureau).

The proposal to fund only one FUSF recipient in a study area and defining VoIP so broadly as to exclude any state commission role substantially reduces state authority to regulate telecommunications. The proposals, moreover, fail to address how consumer protections will be ensured in study areas where, following reform, there is only one funded FUSF carrier and other carriers predictably exit those study area markets. Competition will be limited and it was the presence of that competition which justified prior regulatory decisions of the FCC involving consumer protections and access to telecommunications networks.

B. Ancillary Issues: The FCC's Legal Authority. The FCC's proposals basically adopt a new definition for the scope of Section 251(b)(5)'s "reciprocal compensation" authority. The FCC's new interpretation applies reciprocal compensation to all telecommunications interconnection except for pre-existing arrangements. The only limitation is the preservation of existing arrangements in Section 251(g) and then only until the FCC issues rules bringing those arrangements within Section 251(b)(5).

The FCC relies on a very broad interpretation of Section 201(a) and (b) and Sections 252(d)(2)(A) as well. However, the PaPUC previously questioned the FCC's legal interpretation. The PaPUC is not convinced at this time that the FCC's legal reasoning is solid and, for that reason, reiterates the interpretations set out in the NARUC[53] and the New England Conference of Public Utilities Commissioners (NECPUC)[54] Ex Parte filings challenging that interpretation.

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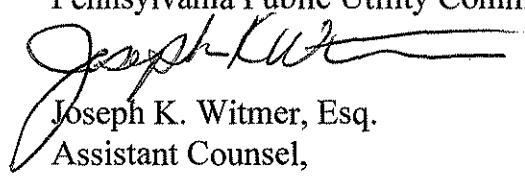
[52] *Comcast IP Phone v. Missouri Public Service Commission,* Case No. 06-4233-CV-C-NKL (USDC WDMO: January 18, 2007).
[53] *In re: Intercarrier Compensation,* Docket No. 01-92, Ex Parte Filing of the National Association of Regulatory Utility Commissioners, (October 20, 2008 and October 21, 2008).
[54] *In re: Intercarrier Compensation,* Docket No. 01-92, Ex Parte Filing of the New England Conference of Public Utilities Commissioners, (October 17, 2008).

The PaPUC appreciates the opportunity to file these Comments notwithstanding the complexity of the issues and the considerably shortened time period.

Respectfully submitted,

Pennsylvania Public Utility Commission



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Dated: November 26, 2008

Docket No. 01-92
PaPUC Comments
November 26, 2008
Exhibit A
Joseph K. Witmer, Assistant Counsel
Andrew Showers, Fixed Utility Services

PENNSYLVANIA PRICE CAP ILECs
Total Implemented Revenue Increases since the passage of Act 183 of 2004

	Total ACTUAL Revenue Increases	Broadband Completion Date
Bentleyville	$0	2008
Buffalo Valley	$665,744	2008
Citizens of Kecksburg	$0	2008
Conestoga	$1,177,256	2008
Consolidated Communications	$0	2008
D&E	$1,553,064	2008
Frontier Breezewood	$29,654	2008
Frontier Canton	$26,259	2008
Frontier Commonwealth Tel	$14,321,718	2008
Frontier Communications PA	$159,736	2008
Frontier Lakewood	$12,406	2008
Frontier Oswayo River	$9,915	2008
Hickory	$29,157	2008
Ironton	$3,780	2008
Lackawaxen	$12,715	2008
Marianna & Scenery Hill	$0	2008
North-Eastern PA	$0	2008
TDS - M&M	$0	2008
TDS - Sugar Valley	$0	2008
United Tel d/b/a Embarq	$3,922,182	2013
Verizon North	$8,582,100	2015
Verizon PA	$39,463,200	2015
Windstream PA	$6,363,999	2013
TOTAL	**$76,332,886**	

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PENNSYLVANIA PRICE CAP ILECs
2008 Revenues from PSI/PCO filings

	Available PSI Increase	ACTUAL Revenue Increase
Bentleyville	$40,797	$0
Buffalo Valley	$235,528	$162,900
Citizens of Kecksburg	$49,114	$0
Conestoga	$614,864	$0
Consolidated Communications	$1,191,650	$0
D&E	$699,206	$0
Frontier Breezewood	$31,907	$29,654
Frontier Canton	$27,890	$26,259
Frontier Commonwealth Tel	$4,155,263	$1,940,263
Frontier Communications PA	$217,322	$159,736
Frontier Lakewood	$13,722	$12,406
Frontier Oswayo River	$18,029	$9,915
Hickory	$24,895	$10,175
Ironton	$72,902	$0
Lackawaxen	$43,407	$0
Marianna & Scenery Hill	$40,872	$0
North-Eastern PA	$174,246	$0
TDS - M&M	$54,793	$0
TDS - Sugar Valley	$14,496	$0
United Tel d/b/a Embarq	$2,276,416	$815,273
Verizon North	$2,431,000	$2,431,000
Verizon PA	$10,398,000	$10,366,600
Windstream PA	$2,872,646	$1,756,144
TOTAL	**$25,698,965**	**$17,720,326**

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PENNSYLVANIA PRICE CAP ILECs
2007 Revenues from PSI/PCO filings

	Available PSI Increase	ACTUAL Revenue Increase
Bentleyville	$37,157	$0
Buffalo Valley	$282,829	$232,017
Citizens of Kecksburg	$66,385	$0
Conestoga	$768,576	$628,198
Consolidated Communications	$1,214,464	$0
D&E	$862,314	$562,868
Frontier Breezewood	$45,439	$0
Frontier Canton	$47,950	$0
Frontier Commonwealth Tel	$4,114,449	$4,114,779
Frontier Communications PA	$310,352	$0
Frontier Lakewood	$17,830	$0
Frontier Oswayo River	$25,089	$0
Hickory	$29,553	$0
Ironton	$95,011	$3,780
Lackawaxen	$53,668	$0
Marianna & Scenery Hill	$38,014	$0
North-Eastern PA	$205,967	$0
TDS - M&M	$157,234	$0
TDS - Sugar Valley	$41,300	$0
United Tel d/b/a Embarq	$3,307,311	$857,578
Verizon North	$3,420,000	$3,340,100
Verizon PA	$20,314,000	$20,314,000
Windstream PA	$3,353,377	$0
TOTAL	**$38,808,269**	**$30,053,320**

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Joseph K. Witmer, Assistant Counsel
Andrew Showers, Fixed Utility Services

PENNSYLVANIA PRICE CAP ILECs
2006 Revenues from PSI/PCO filings

	Available PSI Increase	ACTUAL Revenue Increase
Bentleyville*	n/a	n/a
Buffalo Valley	$314,316	$74,551
Citizens of Kecksburg	$70,590	$0
Conestoga	$874,584	$0
Consolidated Communications	$1,317,446	$0
D&E	$977,640	$43,869
Frontier Breezewood	$47,942	$0
Frontier Canton	$60,332	$0
Frontier Commonwealth Tel	$4,133,338	$4,133,338
Frontier Communications PA	$359,698	$0
Frontier Lakewood	$22,392	$0
Frontier Oswayo River	$29,791	$0
Hickory	$22,393	$18,982
Ironton	$96,395	$0
Lackawaxen	$45,054	$12,715
Marianna & Scenery Hill	$54,243	$0
North-Eastern PA	$179,052	$0
TDS - M&M	$23,501	$0
TDS - Sugar Valley	$3,713	$0
United Tel d/b/a Embarq	$4,127,361	$200,201
Verizon North	$3,257,000	$3,188,000
Verizon PA	$16,765,000	$15,535,600
Windstream PA	$3,863,503	$1,137,132
TOTAL	**$36,645,283**	**$24,344,388**

*Bentleyville was not yet a Price Cap ILEC in 2006

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PENNSYLVANIA PRICE CAP ILECs
2005 Revenues from PSI/PCO filings

	Available PSI Increase	ACTUAL Revenue Increase
Bentleyville*	n/a	n/a
Buffalo Valley	$214,199	$196,276
Citizens of Kecksburg	$77,518	$0
Conestoga	$549,058	$549,058
Consolidated Communications	$1,026,468	$0
D&E	$946,327	$946,327
Frontier Breezewood	$35,941	$0
Frontier Canton	$40,691	$0
Frontier Commonwealth Tel	$4,133,338	$4,133,338
Frontier Communications PA	$238,944	$0
Frontier Lakewood	$15,594	$0
Frontier Oswayo River	$20,788	$0
Hickory*	n/a	n/a
Ironton	$52,812	$0
Lackawaxen *	n/a	n/a
Marianna & Scenery Hill *	n/a	n/a
North-Eastern PA*	n/a	n/a
TDS - M&M †	($73,966)	$0
TDS - Sugar Valley †	($21,702)	$0
United Tel d/b/a Embarq	$2,049,130	$2,049,130
Verizon North‡	($377,000)	($377,000)
Verizon PA‡	($6,753,000)	($6,753,000)
Windstream PA	$3,470,723	$3,470,723
TOTAL	**$5,645,863**	**$4,214,852**

*Company was not yet a Price Cap ILEC in 2005
†Company's PSI mandated a decrease but chose to bank it
‡Company's PSI mandated a decrease, which it implemented

Docket No. 01-92
PaPUC Comments
November 26, 2008
Exhibit A
Joseph K. Witmer, Assistant Counsel
Andrew Showers, Fixed Utility Services

PA ILECs not under Price Cap Regulation

ILECs on Simplified Ratemaking Plans*

Armstrong North
Armstrong PA
Laurel Highland
Marianna & Scenery Hill
Palmerton
Pennsylvania Tel
Pymatuning
South Canaan
Venus
Yukon Waltz

ILECs exempt from filing an NMP under Act 183 due to their small size

Citizens Telephone of NY
Deposit Telephone of NY
Hancock (New York)
West Side (West Virginia)

*Since the Passage of Act 183, none of these ILECs has filed a simplified rate case

PENNSYLVANIA
UNIVERSAL SERVICE FUND
EXPENDITURES
(2002-2009)

Docket Nos.
M-00001337
P-00991648
P-00991649

Year	Expenditures
2002	$ 33,095,234.00
2003	$ 33,515,402.00
2004	$ 33,523,868.00
2005	$ 33,565,233.00
2006	$ 33,565,234.00
2007	$ 33,569,762.00
2008	$ 33,570,452.00 (projected by end of 2008)
2009	$ 33,578,219.00 (projected 2009 support)
Total Expenditures:	$ 267,980,000.00